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EXAMINER
NELSON JR, M

35M1/0602

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ART UNIT	PAPER NUMBER
3507	6

DATE MAILED: 06/02/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

SA

☒ This application has been examined ☒ Responsive to communication filed on 3/14/94 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), ____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-12 are pending in the application.
   Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☒ Claims 12 ~~are~~ IS allowed.
4. ☒ Claims 1-5 and 8-11 are rejected.
5. ☒ Claims 6 and 7 are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Part III DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Long ('552). Note the uppermost portion of the backrest, which conventionally serves as a headrest for a user, and the spring 9.

Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Caron ('012). Note the post 19 and the effective upward extension in Figure 1. Also note the rearward extension of the post relative to the center of rotation of the post.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in

> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Long. Note the statement of the 35 U.S.C. § 102(b) rejection above, as Long shows all claimed structural features of the instant invention. It would have been obvious, if not inherent, for one having ordinary skill in the pertinent art at the time of the instant invention to provide the headrest of Long for a vehicle seat by the method claimed.

Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Caron. Note the statement of the 35 U.S.C. § 102(b) rejection above, as Caron shows all claimed structural features of the instant invention. It would have been obvious, if not inherent, for one having ordinary skill in the pertinent art at the time of the instant invention to provide the headrest of Caron for a vehicle seat by the method claimed.

Claims 1-3, 8 and 9 are rejected under 35 U.S.C. § 103 as being unpatentable over Herzer et al ('241). Herzer et al.

discloses the claimed invention except for a specific seat bun frame means. Note the pivoting means 21, post 10, and clamp 5,6. It would have been obvious to one having ordinary skill in the pertinent art at the time the instant invention was made to provide the structure of Herzer et al. with a seat bun frame means since it was known in the art that such a frame means is conventionally provided with a seat back member to support the lower region of a user.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103 are summarized as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue; and
3. Resolving the level of ordinary skill in the pertinent art.

Allowable Subject Matter

Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 12 is allowable over the prior art of record.

Response to Amendment

Applicant's arguments filed March 14, 1994 have been fully considered but they are not deemed to be persuasive. Objections to the specification and rejections under 35 U.S.C. § 112 have been overcome by the Applicant's amendment. The previously applied prior art rejections have been maintained. Long teaches a headrest that pivots forwardly upon when the vehicle upon which it is mounted impacts the rear of a vehicle, thereby resulting in a rear vehicle impact. Applicant's claims only sets forth a rear vehicle impact. The Applicant's claims do not support the vehicle upon which the inventive chair is mounted being impacted from the rear to cause forward headrest movement. Similarly, the headrests of Caron and Herzer et al are capable of forward pivoting upon a rear vehicle impact (when their respective locking mechanisms are in an unlocked configuration).

Conclusion

German patent (2,232,726) is a newly discovered prior art reference made of record and not relied upon. This reference however is considered especially pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Nelson whose telephone number is (703) 308-2168.

MN
MN
May 26, 1994

KENNETH J. DORNER
SUPERVISORY PATENT EXAMINER
ART UNIT 357